

105TH CONGRESS
2D SESSION

H. R. 3990

To amend the Telephone Disclosure and Dispute Resolution Act to prevent unfair and deceptive practices in telephone billing for miscellaneous products or services.

IN THE HOUSE OF REPRESENTATIVES

JUNE 4, 1998

Mr. DINGELL (for himself and Mr. GORDON) introduced the following bill;
which was referred to the Committee on Commerce

A BILL

To amend the Telephone Disclosure and Dispute Resolution Act to prevent unfair and deceptive practices in telephone billing for miscellaneous products or services.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Anti-Cramming Pro-
5 tection Act of 1998”.

1 **SEC. 2. EXTENSION OF TELEPHONE DISCLOSURE AND DIS-**
2 **PUTE RESOLUTION ACT REMEDIES TO TELE-**
3 **PHONE BILLING FOR MISCELLANEOUS PROD-**
4 **UCTS OR SERVICES.**

5 The Telephone Disclosure and Dispute Resolution
6 Act (15 U.S.C. 5701 et seq.) is amended by adding at
7 the end the following new title:

8 **“TITLE V—UNFAIR AND DECEP-**
9 **TIVE ACTS AND PRACTICES IN**
10 **CONNECTION WITH MIS-**
11 **CELLANEOUS PRODUCTS OR**
12 **SERVICES**

13 **“SEC. 501. BILLING OF MISCELLANEOUS PRODUCT OR**
14 **SERVICE CHARGES.**

15 “(a) BILLING RULES.—The Commission shall, in ac-
16 cordance with the requirements of this section, prescribe
17 rules to protect consumers from unfair and deceptive acts
18 and practices in the billing of miscellaneous product or
19 service charges. Such rules shall—

20 “(1) prohibit any person (including billing
21 aggregators and service providers) from submitting
22 for billing on telephone bills miscellaneous product
23 or service charges that have not been authorized by
24 the subscriber to be billed;

25 “(2) require that any person submitting mis-
26 cellaneous product or service charges for billing—

1 “(A) include an account authorization code
2 that would not generally be known by anyone
3 other than the subscriber and the entity issuing
4 the telephone bill and that reliably indicates
5 that the subscriber authorized the charge; or

6 “(B) comply with such other procedures as
7 the Commission may require to reliably indicate
8 that the subscriber authorized the charge;

9 “(3) require that the bill for each provider of
10 miscellaneous products or services—

11 “(A) be on a page of the telephone bill that
12 is separate from the charges for telephone ex-
13 change and telephone toll services;

14 “(B) describe in reasonable detail each
15 miscellaneous product or service billed;

16 “(C) identify any miscellaneous product or
17 service charges that are recurring; and

18 “(D) include the name and toll free tele-
19 phone number of each miscellaneous product or
20 service provider and the name and toll free tele-
21 phone number of any billing aggregator;

22 “(4) require that a telephone bill that includes
23 miscellaneous product or service charges includes a
24 notification, on each page that summarizes or
25 itemizes miscellaneous product or service charges,

1 that the subscriber may direct billing disputes to the
2 common carrier issuing the bill and provide a toll-
3 free telephone number for that purpose;

4 “(5) require that a subscriber initiating a bill-
5 ing dispute by calling the telephone number referred
6 to in paragraph (4) within 90 days after the date on
7 which the charge appears on the telephone bill of the
8 subscriber shall immediately receive a credit for any
9 disputed miscellaneous product or service charges;
10 and

11 “(6) provide that—

12 “(A) a subscriber may—

13 “(i) instruct its common carrier not to
14 bill for any miscellaneous product or serv-
15 ice charges; or

16 “(ii) to the extent the Commission
17 from time to time determines is technically
18 feasible for the common carrier to imple-
19 ment, instruct its common carrier not to
20 bill for subcategories of products or serv-
21 ices or for particular providers or billing
22 aggregators, as specified by the subscriber;

23 “(B) such instruction may be given either
24 orally or in writing (at the election of the sub-
25 scriber);

1 “(C) a subscriber may instruct a common
2 carrier to resume billing miscellaneous charges
3 either orally or in writing (at the election of the
4 subscriber); and

5 “(D) in verifying such instructions the
6 common carrier shall use adequate internal con-
7 trol procedures for verifying that the request is
8 authorized by the subscriber.

9 “(b) DISPUTE RESOLUTION RULES.—To the extent
10 not already covered by Federal statutes or regulations in
11 effect on the date of enactment of this section, the Com-
12 mission shall adopt rules governing the procedures for a
13 subscriber and a miscellaneous product or service provider
14 to resolve a billing dispute after the disputed charges have
15 been credited to the subscriber’s account in accordance
16 with subsection (a). Such rules shall include rules designed
17 to prevent fraudulent submission of billing disputes by
18 subscribers.

19 “(c) RIGHT TO DISCONTINUE BILLING.—

20 “(1) AUTHORITY TO DISCONTINUE BILLING.—

21 Subject to paragraph (2), if a common carrier rea-
22 sonably believes that charges are being submitted for
23 billing in violation of this section, the regulations
24 adopted under this section, or any other Federal or
25 State statute or regulation, the carrier, after written

1 notice to the Commission describing the action and
2 the reasons therefor—

3 “(A) may discontinue billing for any mis-
4 cellaneous product or service provider or any
5 billing aggregator submitting miscellaneous
6 product or service charges;

7 “(B) may discontinue billing for any type
8 or category of miscellaneous product or service;
9 or

10 “(C) may discontinue billing for any type
11 or category of miscellaneous product or service
12 submitted by an individual product or service
13 provider or billing aggregator.

14 “(2) AUTHORITY SUBJECT TO OTHER LAW.—

15 No action by a common carrier under paragraph (1)
16 shall be exempt from any other Federal or State law
17 prohibiting anticompetitive or discriminatory acts or
18 practices.

19 “(d) RULEMAKING.—

20 “(1) SCHEDULE AND PROCEDURE.—The Com-
21 mission shall prescribe the rules under this section
22 within 270 days after the date of enactment of this
23 Act. Such rules shall be prescribed in accordance
24 with section 553 of title 5, United States Code.

1 “(2) TREATMENT OF RULE.—A rule prescribed
2 under this subsection shall be treated as a rule
3 issued under section 18(a)(1)(B) of the Federal
4 Trade Commission Act (15 U.S.C. 57(a)(1)(B)).

5 “(e) ENFORCEMENT.—Any violation of any rule pre-
6 scribed under subsection (a) shall be treated as a violation
7 of a rule under section 5 of the Federal Trade Commission
8 Act (15 U.S.C. 45) regarding unfair or deceptive acts or
9 practices. Notwithstanding section 5(a)(2) of such Act (15
10 U.S.C. 45(a)(2)), communications common carriers shall
11 be subject to the jurisdiction of the Commission for pur-
12 poses of this title.

13 “(f) APPLICABILITY.—The regulations required by
14 this section shall apply to miscellaneous product or service
15 charges first billed after the effective date of those regula-
16 tions.

17 **“SEC. 502. RELATION TO STATE LAWS.**

18 “(a) STATE LAW APPLICABLE UNLESS INCONSIST-
19 ENT.—This title does not annul, alter, or affect, or exempt
20 any person subject to the provisions of this title from com-
21 plying with, the laws of any State with respect to tele-
22 phone billing or other credit billing practices, except to the
23 extent that those laws are inconsistent with any provision
24 of this title, and then only to the extent of the inconsis-
25 tency. The Commission is authorized to determine whether

1 such inconsistencies exist. The Commission may not deter-
2 mine that any State law is inconsistent with any provision
3 of this chapter if the Commission determines that such
4 law gives greater protection to the consumer.

5 “(b) REGULATORY EXEMPTIONS.—The Commission
6 shall by regulation exempt from the requirements of this
7 title any class of acts and practices subject to the rules
8 prescribed under subsection (a) within any State if it de-
9 termines that under the law of that State that class of
10 transactions is subject to requirements substantially simi-
11 lar to those imposed under this chapter or that such law
12 gives greater protection to the consumer, and that there
13 is adequate provision for enforcement.

14 **“SEC. 503. ENFORCEMENT BY COMMISSION.**

15 “The Commission shall enforce the requirements of
16 this title. For the purpose of the exercise by the Commis-
17 sion of its functions and powers under the Federal Trade
18 Commission Act, a violation of any requirement imposed
19 under this title shall be deemed a violation of a require-
20 ment imposed under that Act. All the functions and pow-
21 ers of the Commission under that Act are available to the
22 Commission to enforce compliance by any person with the
23 requirements imposed under this title, irrespective of
24 whether that person is engaged in commerce or meets any
25 other jurisdictional tests in that Act. The Commission may

1 prescribe such regulations as are necessary or appropriate
2 to implement the provisions of this title.

3 **“SEC. 504. ACTIONS BY STATES.**

4 “(a) IN GENERAL.—Whenever an attorney general of
5 any State has reason to believe that the interests of the
6 residents of that State have been or are being threatened
7 or adversely affected because any person has engaged or
8 is engaging in a pattern or practice which violates any rule
9 of the Commission under section 501(a), the State may
10 bring a civil action on behalf of its residents in an appro-
11 priate district court of the United States to enjoin such
12 pattern or practice, to enforce compliance with such rule
13 of the Commission, to obtain damages on behalf of their
14 residents, or to obtain such further and other relief as the
15 court may deem appropriate.

16 “(b) NOTICE.—The State shall serve prior written
17 notice of any civil action under subsection (a) upon the
18 Commission and provide the Commission with a copy of
19 its complaint, except that if it is not feasible for the State
20 to provide such prior notice, the State shall serve such
21 notice immediately upon instituting such action. Upon re-
22 ceiving a notice respecting a civil action, the Commission
23 shall have the right (1) to intervene in such action, (2)
24 upon so intervening, to be heard on all matters arising
25 therein, and (3) to file petitions for appeal.

1 “(c) VENUE.—Any civil action brought under this
2 section in a district court of the United States may be
3 brought in the district wherein the defendant is found or
4 is an inhabitant or transacts business or wherein the viola-
5 tion occurred or is occurring, and process in such cases
6 may be served in any district in which the defendant is
7 an inhabitant or wherever the defendant may be found.

8 “(d) INVESTIGATORY POWERS.—For purposes of
9 bringing any civil action under this section, nothing in this
10 Act shall prevent the attorney general from exercising the
11 powers conferred on the attorney general by the laws of
12 such State to conduct investigations or to administer oaths
13 or affirmations or to compel the attendance of witnesses
14 or the production of documentary and other evidence.

15 “(e) EFFECT ON STATE COURT PROCEEDINGS.—
16 Nothing contained in this section shall prohibit an author-
17 ized State official from proceeding in State court on the
18 basis of an alleged violation of any general civil or criminal
19 antifraud statute of such State.

20 “(f) LIMITATION.—Whenever the Commission has in-
21 stituted a civil action for violation of any rule or regulation
22 under this Act, no State may, during the pendency of such
23 action instituted by the Commission, subsequently insti-
24 tute a civil action against any defendant named in the

1 Commission’s complaint for violation of any rule as alleged
2 in the Commission’s complaint.

3 “(g) ACTIONS BY OTHER STATE OFFICIALS.—

4 “(1) Nothing contained in this section shall
5 prohibit an authorized State official from proceeding
6 in State court on the basis of an alleged violation of
7 any general civil or criminal statute of such State.

8 “(2) In addition to actions brought by an attor-
9 ney general of a State under subsection (a), such an
10 action may be brought by officers of such State who
11 are authorized by the State to bring actions in such
12 State for protection of consumers and who are des-
13 ignated by the Commission to bring an action under
14 subsection (a) against persons that the Commission
15 has determined have or are engaged in a pattern or
16 practice which violates a rule of the Commission
17 under section 501(a).

18 **“SEC. 505. DEFINITIONS.**

19 “As used in this title:

20 “(1) BILLING AGGREGATOR.—The term ‘billing
21 aggregator’ means a person who aggregates the
22 charges of one or more providers of miscellaneous
23 products or services and transmits them to be in-
24 cluded in a telephone bill.

1 “(2) BILLING DISPUTE.—The term ‘billing dis-
2 pute’ consists of any one or more of the following
3 claims:

4 “(A) that a miscellaneous product or serv-
5 ice charge was not authorized by the subscriber;

6 “(B) that a miscellaneous product or serv-
7 ice charge was not in an amount authorized by
8 the subscriber; or

9 “(C) that a miscellaneous product or serv-
10 ice charge was transmitted for a product or
11 service that was not provided to the subscriber.

12 “(3) COMMISSION.— The term ‘Commission’
13 means the Federal Trade Commission.

14 “(4) COMMON CARRIER, LOCAL EXCHANGE CAR-
15 RIER, TELEPHONE EXCHANGE SERVICE, AND TELE-
16 PHONE TOLL SERVICE.—The terms ‘common car-
17 rier’, ‘local exchange carrier’, ‘telephone exchange
18 service’, and ‘telephone toll service’ have the mean-
19 ings provided in section 3 of the Communications
20 Act of 1934.

21 “(5) MISCELLANEOUS PRODUCT OR SERVICE.—
22 The term ‘miscellaneous product or service’ means
23 any product or service that is not—

24 “(A) telephone exchange service, telephone
25 toll service, or services that are provided by the

1 subscriber's selected provider of telephone ex-
2 change service or telephone toll service and that
3 the Commission defines by rule as services that
4 are ancillary to telephone exchange service or
5 telephone toll service;

6 “(B) pay-per-call services subject to the
7 provisions of title II of this Act; or

8 “(C) telephone billed purchases subject to
9 the provisions of title III of this Act.

10 “(5) MISCELLANEOUS PRODUCT OR SERVICE
11 CHARGES.—The term ‘miscellaneous product or
12 service charges’ means charges for miscellaneous
13 product or services that are billed on a telephone
14 bill.

15 “(6) SUBSCRIBER.—The term ‘subscriber’
16 means the party identified in the account records of
17 a common carrier issuing a telephone bill (or on
18 whose behalf a telephone bill is issued), any other
19 person identified in such records as authorized to
20 change the services subscribed to or to charge serv-
21 ices to the account, and any person otherwise law-
22 fully authorized to represent such party.

23 “(7) TELEPHONE BILL.—The term ‘telephone
24 bill’ means a bill—

1 “(A) for telephone exchange service and
2 other services issued by or on behalf of a com-
3 mon carrier to its telephone exchange service
4 customers; or

5 “(B) for telephone toll service and other
6 services issued by or on behalf of a common
7 carrier to its telephone toll service customers.”.

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